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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1991

LEAMON THURMON GOULD,

Petitioner,

v.

P. T. KRAKATAU STEEL,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is a foreign manufacturer, which derives substantial revenues from its purposeful establishment of a market for consumption of its product in the United States, deprived of due process of law when required to defend a product liability suit in the state of injury merely because it had no specific knowledge that the product would be used in that state?

2. Is an American worker deprived of due process of law when denied the right to bring a product liability suit in the state of injury only because the foreign manufacturer structured its business to avoid direct contacts with any particular state, although its product was ultimately delivered to the state of injury following the manufacturer's affirmative efforts to create a market for consumption of its product in the United States?

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JURISDICTIONAL STATEMENT

The judgment to be reviewed was entered by the Court of Appeals for the Eighth Circuit on February 24, 1992.

The order denying the petition for rehearing and suggestion for rehearing en banc was entered on April 9, 1992.

Jurisdiction in this Court is predicated upon 28 U.S.C. § 1254(1).

ARKANSAS STATUTE INVOLVED

Ark. Code Ann. § 16-4-101 C 1(d).

"C. PERSONAL JURISDICTION BASED UPON CONDUCT.

1. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a (cause of action) (claim for relief) arising from the person's:

* * *

(d) Causing tortious injury in this State by an act or omission outside this state if he regularly does or solicits business,

> or engages in any other persistent course of conduct in this state or derives substantial revenue from goods consumed or services used in this state; * * * ."

OTHER STATE STATUTES INVOLVED

The section of the Arkansas long-arm statute quoted above (a portion of the Uniform Interstate and International Procedure Act) is a 1962 product of the National Conference of Commissioners on Uniform State Laws, and in verbatim or essentially identical form has been incorporated in the long-arm statutes of the following 30 jurisdictions:

> Ala. R. Civ. P. 4.2; Alaska Stat. § 9.05.015 (1983); Conn. Gen. Stat. Ann. § 52-59b (West 1991); Del. Code Ann. tit. 10, § 3104 (Supp. 1990); D.C. Code Ann. § 13-423 (Supp. 1991); Fla. Stat. Ann. § 48.193 (West Supp. 1992); Ga. Code Ann. § 9-10-91 (Michie Supp. 1991); Idaho Code § 5-514 (1990); Ind. Code Ann. TR. 4.4 (Burns 1992); Kan. Stat. Ann. § 60-308 (1983); Ky. Rev. Stat. Ann. § 454.210 (Michie Supp. 1990); La. Rev. Stat. Ann. § 13:3201 (West 1991); Me. Rev. Stat. Ann. tit. 14, § 704-A (West 1980); Md. Cts. & Jud. Proc. Code Ann. § 6-103 (1989); Mass. Gen. Laws Ann. ch. 223A, § 3 (West 1985); Mich. Comp. Laws Ann. § 600.705 (West 1987); Minn. Stat. Ann. § 543.19 (West 1988); Mont. R. Civ. P. 4B Neb. Rev. Stat. § 25-536 (1989); N.Y. Civ. Prac. L. & R. § 302 (McKinney 1990); N.C. Gen. Stat. § 1-75.4 (1991); N.D. R. Civ. P. 4b; Ohio Rev. Code Ann. § 2307.382 (Anderson 1991); Okla.

Stat. Ann. tit. 12, § 1701.03 (West 1980); Or. R. Civ. P. 4; 42 Pa. Cons. Stat. Ann. § 5322 (1981); S.C. Code Ann. § 36-2-803 (Law Co-op. 1977); Va. Code Ann. § 8.01-328.1 (Supp. 1991); W. Va. Code § 56-3-33 (Supp. 1992); Wis. Stat. Ann. § 801.05 (West 1977).

The District Court expressly held that the foreign defendant's conduct fell within the quoted provision of the Arkansas statute. Nevertheless the District Court and the Court of Appeals further held that subjecting the foreign manufacturer to personal jurisdiction in Arkansas was violative of due process. To this extent, the decisions below affect the validity of the long-arm statutes in Arkansas and in the thirty states additionally listed.

STATEMENT OF THE CASE

P. T. Krakatau Steel (Krakatau) is an Indonesian corporation, engaged in the manufacture of steel products. In the time frame of 1986-87 Krakatau sought to establish a United States market by advertising in an international trade journal and by sending its marketing director and its present to this country on at least two separate occasions to visit in California and New York with a New York broker, Empire Steel Trading Co. (Empire). In late 1987 Krakatau contracted for the sale to Empire in Indonesia of 14,000 metric tons of its products. Shipping documents reflect Krakatau's knowledge that its products would be delivered by Empire chartered vessels to the United States ports of Houston, Tampa and New Orleans.

Of the total shipment, approximately 3,000 metric tons of cast wire rods, with a total purchase price in

excess of $900,000.00, were delivered to an Empire customer in West Memphis, Arkansas. There has been and can be no showing that Krakatau was aware that Arkansas was the state of destination for this shipment.

On August 4, 1988, petitioner Gould, while unpackaging the Krakatau product in Arkansas, sustained injuries rendering him a paraplegic. As a citizen of Arkansas, he subsequently commenced this action against Krakatau in the Eastern District of Arkansas on theories of negligence in packaging and strict liability in tort. Jurisdiction for the action was predicated upon 28 U.S.C. § 1332(a), there being diversity of citizenship between the parties and the amount in controversy exceeding the sum of $50,000.00, exclusive of interest and costs. Krakatau's Rule 12(b)(2) motion to dismiss for want of personal jurisdiction was granted by the District Court, a decision affirmed by a panel of the Court of Appeals for the Eighth Circuit. Petitioner's timely petition for rehearing was denied.

Krakatau contends that subjecting it to the jurisdiction of an Arkansas court would deprive it of due process of law. Conversely, in the District Court and on appeal, petitioner Gould has maintained that the granting of Krakatau's motion would deprive him of due process of law since an Arkansas court is his only available forum for relief.

ARGUMENT

A foreign manufacturer, seeking a United States market, places its product in the stream of commerce. Passing through the hands of one or more intermediaries, the product reaches one of the states where, while being used or consumed, it causes injury to a citizen of that state. The manufacturer has derived substantial revenue from the described transaction, but has never targeted the particular state as a market and, in fact, may be wholly ignorant of the state's very existence. Although the state's statutory law provides that the manufacturer can be required to appear and defend an action brought against it by the injured citizen under these circumstances, the manufacturer contends that having had no contacts with the forum state, due process considerations of fair play and substantial justice insulate it from liability.

In this factual context, Leamon Gould, the American citizen, asks why he should not be permitted to pursue his claim for damages against the foreign manufacturer, P.T. Krakatau Steel, which has purposefully elected to establish its commercial presence in the United States.

The District Court and the Eighth Circuit Court of Appeals rejected the Arkansas long-arm statutory scheme and sustained Krakatau's motion to dismiss, even in the face of the plaintiff citizen's contention that due process should entitle him to at least an opportunity to present a claim for relief in the only American forum available to him.

The decisions below are in direct conflict with the decision of the Supreme Court of Minnesota in *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717 (Minn. 1985), *cert. denied*,

474 U.S. 1006 (1985). The applicable section of the Minnesota long-arm statute is identical to that of Arkansas.

The decision of the Eighth Circuit Court of Appeals conflicts in principle with the decisions of the Third, Fifth and Seventh Circuits in the following cases:

> *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir. 1981), *cert. denied*, 454 U.S. 1085; *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980); *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975).

The principle enunciated by the Supreme Court of Minnesota and the Third, Fifth and Seventh Circuits has been succinctly stated as follows:

> "Underlying the assumption of jurisdiction in these cases is the belief that the fairness requirements of due process do not extend so far as to permit a non-resident manufacturer to insulate itself from the reach of the forum state's long-arm rule by selling its goods to a middleman distributor or by professing ignorance of the ultimate destination of its products, where an injury is caused in the forum state by its product and the product is actually sold and used in the forum state." 4 *American Law of Products Liability*, 72 (Timothy E. Travers et al., 3d ed. 1987) (citing additional cases).

The long-arm statutes of Arkansas and the other thirty previously identified states are a product of the early 1960's and can be understood and appreciated only in historical context.

In *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), this Court held that due process requirements

for exercise of personal jurisdiction could be satisfied only after a showing of "minimum contacts" with the foreign state coupled with compliance with "traditional notions of fair play and substantial justice." In *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), the Court required a further showing – that a defendant must have purposefully availed itself of the privilege of conducting forum state activities.

Taken together, both cases prohibited exercise of jurisdiction over a foreign defendant absent a showing of traditional "doing business" activities intentionally directed toward the forum state by the defendant. As a result, many suits against foreign defendants, particularly in product liability actions, could not be maintained by plaintiffs in the state of injury. Beginning in the early 1960's, the legislatures of the various states responded to this phenomenon by adopting long-arm statutes permitting courts in those states to exercise jurisdiction over foreign defendants upon a showing that there had been an injury committed in the forum state by the defendant's act or omission outside the state. Some states required this showing of contacts and nothing more. Nineteen others, including Arkansas, require a showing of injury within the state caused by an act or omission of the defendant outside the state plus an additional factor such as doing business or deriving substantial revenue from services used or goods consumed in the forum state.

The District Court, after examining the record in the context of the pertinent long-arm statutory provision, found that Gould's claim for relief did indeed arise from a tortious injury in Arkansas caused by an act or omission by Krakatau outside Arkansas while Krakatau derived

substantial revenue from consumption of its goods in Arkansas. In short, the long-arm statutory contacts requirements were satisfied in every respect. But, said both courts below, to require Krakatau to appear and to defend in Arkansas would offend traditional notions of fair play and substantial justice, thus depriving it of due process protections.

Krakatau has purposefully and successfully created a market for its products in the United States. But it doesn't know where in the United states its products are being used and consumed. Both decisions below turned on this single point. Citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the courts below stated that Krakatau could not reasonably expect to be haled into a court in Arkansas under these circumstances. Perhaps not Arkansas as such, but surely Krakatau could reasonably expect to be haled into a court in the United States. Since there is no national court of general jurisdiction under our federal system, in this case the forum is Arkansas or none.

Both courts below pointed out that Krakatau had no agents, dealers, telephone listing, offices, etc. in Arkansas, and therefore had no "contacts" with the state. Surely, in this day and time there must be a recognition that business can be conducted and revenues generated without establishing such contacts with a forum state. As international trade barriers fall, we have seen a variety of foreign manufactured products entering this country for consumption, trafficked through intermediaries or brokers, which can and do cause harm to American consumers. Prospectively, a foreign manufacturer may have no knowledge or even an inkling that its products will

reach a particular destination. In fact, the manufacturer, while desiring and knowing that its product will reach the United States market place, may have no idea of our unique concept of a federal union. To permit such manufacturers to enjoy immunity from suit by claiming the protection of due process is to ignore contemporary commercial realities and, perhaps ironically, to deny to the American consumer his or her only forum for redress.

Responding to Krakatau's initial claim of due process protection, petitioner Gould stated that to grant Krakatau's motion would deny to him due process of law. Gould is a citizen of the United States. The instant case, unlike *International Shoe, Hanson,* and *World-Wide Volkswagen,* does not require a weighing of the relative due process rights and interests of two American citizens. The question presented is not one of whether a citizen of one of the United States can be properly subjected to the jurisdiction of a court within another state. Rather, we are here concerned with due process considerations in the context of an action by a citizen of the United States against a non-U.S. defendant where the only forum available to the United States citizen is the state of which he is a citizen, the state in which he sustained the injuries upon which his claim for relief is based, the state in which a substantial volume of the defendant's product was being used and consumed when it caused the injuries to the citizen, and the state which by statute has attempted to open the doors of its courts to that citizen upon a showing of these contacts with the state.

Thus, this petition implicitly raises still a third question. In determining the validity of a foreign manufacturer's due process assertions in a situation in which an

American citizen is contending that due process must afford him a forum for relief, whose rights are paramount?

In conducting any balancing test necessary to determine "fair play and substantial justice" in a given case, the relative conveniences and inconveniences to the parties should involve a taking into account whether an alternative forum exists. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985). If Gould has an alternative forum, it is in Indonesia. Krakatau has elected to establish an American presence and, if required to appear and defend here, will be assured of a fair trial – "fair play and substantial justice" in every sense of those concepts.

CONCLUSION

1. This case presents a substantial question of significant interest to consumers in each of the several states.

2. The decisions below affect the validity of long-arm statutory provisions in thirty-one states.

3. The decisions below are in conflict with a decision of the Supreme Court of Minnesota and conflict in principle with decisions of the Third, Fifth and Seventh Circuits.

4. The due process rights of an American citizen must not be superseded by due process claims of a non-U.S. citizen.

WHEREFORE, petitioner prays that its petition for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit be granted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LEAMON THURMAN GOULD

PLAINTIFF

V. NO. J-C-89-77

EMPIRE STEEL TRADING CO., INC.
AND P.T. KRAKATAU STEEL

DEFENDANTS

ORDER

(Filed June 4, 1991)

Before the Court is the Motion to Dismiss filed on behalf of the defendant P.T. Krakatau Steel ("Krakatau"). Pursuant to request, a hearing was held on the Motion to Dismiss. Defendant Krakatau contends that it is not subject to the jurisdiction of this court by reason of lack of sufficient contacts with the state of Arkansas. Plaintiff contends that Krakatau is subject to the jurisdiction of this court by reason of Ark. Code Ann. § 16-4-101 C.1(d), which provides that a court may "exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's causing tortious injury in this state by an act or omission outside if he regularly does or solicits business, or engages in any other persistent course of conduct in this state or derives substantial revenue from goods consumed or services used in this state."

Defendant Krakatau is a corporation organized and existing under the laws of the Republic of Indonesia with

its principal place of business in the city of Jakarta. Krakatau manufactures steel products, including steel plates and wire rods in Indonesia. Krakatau has no offices or other facilities of any kind outside of Indonesia. According to the affidavit of Soetor Mangoensoewargo, Marketing Director of Krakatau, Krakatau's manufacturing and sales are all carried out within Indonesia. Mr. Mangoensoewargo further states that Krakatau does not import or distribute products in the United States or make direct sales in the United States. Additionally, Mr. Mangoensoewargo states as follows:

> 4. Krakatau has no distributors or sales agents located in the State of Arkansas or anywhere else in the United States of America. All of Krakatau's sales are made within the Republic of Indonesia either directly to the customer or through an Indonesian sales agent.
>
> 5. Krakatau does not design or tailor its steel wire products for either the Arkansas or American market.
>
> 6. Krakatau does not have, and has never had, an office within the State of Arkansas. Krakatau has never had a salesman or an employee of any kind, who has made calls in the State of Arkansas or who has entered the State of Arkansas for any purpose. Upon information and belief, Krakatau has never placed a telephone call to the state of Arkansas, or sent a telex or a facsimile transmission to the State of Arkansas.
>
> 7. Krakatau has never placed an advertisement in a publication intended for circulation in the state of Arkansas or anywhere else in the United States.

8. Krakatau has never advised anyone in Arkansas concerning the use of its steel products.

9. Krakatau has never had any relationship whatsoever, commercial or otherwise, with the plaintiff, Leamon Thurman Gould, or his employer, Forbes Steel & Wire Corporation ("Forbes") of West Memphis, Arkansas, or anyone else in the State of Arkansas. Krakatau has never sold any products to either plaintiff or Forbes, nor has it ever had any contractual relationship whatsoever with either plaintiff or Forbes or anyone else in the State of Arkansas.

10. In mid-1987, Krakatau did make a sale of wire rods to Empire Steel Trading co. ("Empire"), and Empire's answer in this case (paragraphs 6, 12) indicates that the wire rods in question were subsequently sold by Empire to Forbes. Krakatau had no knowledge of this transaction between Empire and Forbes and was not involved in it. The sale to Empire involved two single coils of approximately 850 kg. of prime quality wire rod. The sale was mad [sic] f.o.b. Cigading, Indonesia. Payment was made by letter of credit to Bank Bumi Daya, Cilegon Branch, Indonesia. The unloading port was to be "mainport USA". Krakatau had no information that the shipment was to end up in Arkansas, at Forbes.

Defendant Krakatau states that even if the presence in Arkansas of wire rods manufactured by Krakatau constitutes a minimal contact with the state, exercise of jurisdiction over the Indonesian corporation would offend traditional notions of fair play and substantial justice.

Plaintiff states that certain statements or assertions made by Mr. Mangoensoewargo are misleading. For example, plaintiff argues that while the affiant states that Krakatau "does not design or tailor its steel wire products for either the Arkansas or American market," in August 1986, Krakatau placed an advertisement in the "Metal Bulletin," published in the United Kingdom and distributed worldwide, including in the United States. In that advertisement, Krakatau claimed that its products complied with international standards which included the "ASTM" [American Society for the Testing of Metals]. Plaintiff further claims that in June of 1987, Krakatau's General Manager of Marketing met with one or more representatives of Empire in San Francisco, California. In the following month Soetoro Mangoensoewargo, Marketing Director of the company, met with Empire Steel Trading Company, Inc. ("Empire") people in New York, this being described as "a social visit." In June 1988, Mr. T. Aribowo, Krakatau's president, attended a general steel conference in New York where Empire representatives were also present.

In his brief, plaintiff also states that on November 6, 1987, Krakatau, as seller, and Empire, as buyer, entered into a contract for the sale of approximately 14,000 metric tons of Krakatau products to be delivered by vessel to the United States ports of Houston, Tampa, and New Orleans. From the total shipment, approximately 3,000 metric tons of Krakatau low carbon continuous cast wire rods reached West Memphis, Arkansas, on March 14, 1988, constituting the Krakatau manufactured and packaged product which allegedly caused Mr. Gould's injuries. The total cost of the shipment to Forbes Steel at West

Memphis exceeded $900,000.00, revenue shared by the manufacturer Krakatau and an unknown percentage by Empire as its broker.[1] According to a response to plaintiff's interrogatory, Empire states that to date Empire has chartered six different vessels to carry a total of approximately 59,000 metric tons of Krakatau steel products to the United States.

The plaintiff stipulates that there has been no contact, as such, between Krakatau and the state of Arkansas. Plaintiff contends, however, that the record reflects advertising by Krakatau for sale of products within the United States, the physical presence of Krakatau officers within the United States for the purpose of soliciting business in this country, and substantial and continual sales of Krakatau products since November, 1987. The Court is of the opinion that even taking the facts as stated by plaintiff to be true, the motion to dismiss should be granted.

In determining this issue, the Court's inquiry consists of two parts. First, the Court must decide whether the facts presented satisfy the requirements of Arkansas' long arm statute. *Institutional Food Marketing Associates, Ltd. v. Golden State Strawberries, Inc.*, 747 F.2d 448, 452 (8th Cir. 1984); *Sales Service, Inc. v. Daewoo International (America) Corp.*, 719 F.2d 971, 972 (8th Cir. 1982); *Scullin Steel Co. v. National Railway Utilization Corp.*, 676 F.2d 309, 312 (8th Cir. 1982). The Court must then determine if the exercise

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[1] The defendant, in its reply brief, disputes the figures submitted by plaintiff. Although the plaintiff's proof on this issue is sketchy, the court will nevertheless accept the plaintiff's facts for purposes of the motion.

of personal jurisdiction is consistent with due process. *Mountaire Feeds, Inc. v. Agro Impex, S.A.*, 677 F.2d 651 (8th Cir. 1982). "The Arkansas Supreme Court has interpreted the reach of the Arkansas long-arm statute to be coextensive with that permitted by due process." *Id*, 677 F.2d at 653. Therefore, in determining the reach of the Arkansas long arm statute, the Court must consider the limits of the due process clause as set out in United States Supreme Court cases and various federal circuit court of appeals cases. It is always the plaintiff who must establish jurisdiction by a preponderance of the evidence. The burden never shifts to the objecting party. *Newhard, Cook & Co. v. Inspired Life Centers, Inc.*, 895 F.2d 1226, 1228 (8th Cir. 1990).

There is no question that the tortious injury occurred within the state of Arkansas by an act or omission outside this state. However, the facts do not support a finding that defendant Krakatau regularly conducts business or solicits business in the state of Arkansas. Nor does Krakatau engage in any persistent course of conduct in this state. At most, Krakatau has conducted a limited amount of business with Empire, and that business was not conducted in the state of Arkansas. Furthermore, it was only at Empire's direction that the coils arrived in Arkansas. Even in Empire's answers to Interrogatories submitted by the plaintiff, Empire only stated that Empire informed defendant Krakatau that the ultimate destination of the shipment was the United States of America.

Receipt by Forbes Steel at West Memphis of a $900,000.00 shipment, the cost of which was allegedly shared by Krakatau and Empire, may tend to support the argument that Krakatau did receive substantial revenue

from goods consumed or services used in this state. However, since the Arkansas Supreme Court has interpreted the reach of the long-arm statute to be coextensive with that permitted by due process, the Court must further inquire as to whether exercise of jurisdiction would violate due process. And, as stated in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), "the constitutional touchstone" of the determination whether an exercise of personal jurisdiction comports with due process "remains whether the defendant purposefully established 'minimum contacts' in the forum State." *Id.* at 474, quoting *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

In *Burger King Corp.*, the United States Supreme Court stated that jurisdiction is proper "where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King Corp.*, 471 U.S. at 475. In *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987), a case heavily relied upon by the defendant Krakatau, the Supreme Court held that the "substantial connection" referred to in *Burger King*, between the defendant and the forum State necessary for a finding of minimum contacts must come about by *"an action of the defendant purposefully directed toward the forum State."* (citation omitted). *Asahi*, 480 U.S. at 112. The Court in *Asahi* further stated that the placement of a product into the stream of commerce, "without more, is not an act of the defendant purposefully directed toward the forum State." *Id.* The Court held further:

> Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example designing the

> product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

Id.

The Supreme Court in *Burger King Corp.* stated that "this 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person,' " (citations and footnote omitted). *Burger King Corp.*, 471 U.S. at 475. The Court further stated that jurisdiction is proper "where the contacts proximately result from actions by the defendant *himself* that create a "substnatial connection" with the forum State." *Id.*

The Eighth Circuit has developed guidelines to aid in analyzing the sufficiency of Krakatau's contacts with the state of Arkansas. The Court is to consider:

> (1) the nature and quality of the contacts with the forum state; (2) the quantity of the contacts with the forum state; (3) the regulation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties.

Newhard, Cook & Co., 895 F.2d at 1228.

The Court finds that the language in *Asahi* and *Burger King Corp.* as well as *Newhard, Cook & Co.* compel a finding that the motion to dismiss should be granted. There is nothing in the record to indicate that defendant Krakatau designed the product for the market in Arkansas, that defendant advertised in Arkansas, that defendant established channels for providing regular advice to customers in Arkansas, or marketed the product through a distributor who has agreed to serve as the sales agent in Arkansas. There is nothing in the record to indicate that Krakatau knew or anticipated that the sale of the rods would end up in Arkansas. In fact, the affidavit of Soetoro Mangoensoewargo indicates that Krakatau had no information that the shipment to West Memphis, Arkansas was to be directed there. There is simply nothing in the record to indicate that the contacts proximately result from actions by the defendant itself which create a "substantial connection" with Arkansas.

This Court's holding in *Hawes v. Honda Motor Company, Ltd.*, 738 F.Supp. 1247 (E.D. Ark. 1990) is not inconsistent with this holding. In *Hawes*, the Court referred to the language in *Asahi*, where the Supreme Court noted that there was no evidence that the foreign defendant "designed its product in anticipation of sales in California." This Court concluded in *Hawes* that Honda R & D designed its product exclusively for Honda Motor and American Honda, a wholly owned subsidiary of Honda Motor, who distributed in Arkansas thousands of ATVs designed by Honda R & D. This Court found that based upon the facts before it, there could be no doubt that Honda R & D designed its product in anticipation of sales in Arkansas. In the present case, no evidence has been

presented to the Court to indicate that Krakatau designed its product in anticipation of sales in Arkansas, or purposely directed its actions toward Arkansas.

As stated earlier, pursuant to request, the Court conducted a hearing on the motion to dismiss, at which time counsel for the plaintiff argued that the Arkansas long arm statute does not require any purposeful conduct, or any scienter. However, since the Arkansas Supreme Court has interpreted the reach of the Arkansas long-arm statute to be coextensive with that permitted by due process, *Mountaire*, 677 F.2d at 653, the Court cannot ignore language in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), where the Supreme Court refers to a defendant who "purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Further, in *Asahi*, 480 U.S. at 113, the Supreme Court referred to the defendant who "designed its product in anticipation of sales in California."

Even assuming *arguendo* that Krakatau could be said to have purposely availed itself of the privilege of conducting activities in Arkansas, "these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " *Burger King Corp.*, 471 U.S. at 476. The Supreme Court in *Burger King Corp.* added:

> Nevertheless, minimum requirements inherent in the concept of 'fair play and substantial justice' may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities. (citations omitted).

> As we previously have noted, jurisdictional rules may not be employed in such a way as to make litigation 'so gravely difficult and inconvenient' that a party unfairly is at a 'severe disadvantage' in comparison to his opponent. (citations omitted).

Id. at 477-478.

The Court is of the opinion that based upon the legal authority cited herein, to exercise jurisdiction over the defendant Krakatau would be to stretch the limits of the due process clause further than that intended by the Eighth Circuit Court of Appeals and the United States Supreme Court, and would violate the principles of fair play and substantial justice.

Based upon the foregoing, the court hereby grants the Motion to Dismiss defendant Krakatau.

ORDERED this 4th day of June, 1991.

/s/ Elsijane Trimble Roy
United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

LEAMON THURMAN GOULD

PLAINTIFF

V. NO. J-C-89-77

EMPIRE STEEL TRADING CO., INC.
AND P.T. KRAKATAU STEEL

DEFENDANTS

JUDGMENT
(Filed Jun. 4, 1991)

In accordance with the Order entered this same date, the Court hereby dismisses defendant P.T. Krakatau Steel.

ENTERED this 4th day of June, 1991.

/s/ Elsijane T. Roy
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 91-2514EA

Leamond Thurman Gould,	
Appellant,	* Appeal from the United States District Court for the Eastern District of Arkansas.
v.	
P.T. Krakatau Steel,	
Appellee.	

Submitted: January 7, 1992

Filed: February 24, 1992

Before JOHN R. GIBSON, Circuit Judge, FLOYD R. GIBSON, Senior Circuit Judge, and BOWMAN, Circuit Judge.

FLOYD R. GIBSON, Senior Circuit Judge.

Leamon Gould appeals from the district court's[1] order granting P.T. Krakatau Steel's motion to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). We affirm.

---

[1] The Honorable Elsijane T. Roy, Senior United States District Judge for the Eastern District of Arkansas.

I. BACKGROUND

P.T. Krakatau Steel ("Krakatau"), an Indonesian corporation with its principal place of business in Jakarta, Indonesia, manufactures steel products. Krakatau has no offices, agents or property located in the United States and all of its manufacturing and sales take place in Indonesia. In August of 1986, Krakatau placed an advertisement in the "Metal Bulletin," a steel industry journal published in the United Kingdom and distributed worldwide. In the advertisement Krakatau stated that its products complied with international standards, including the American Standards for Testing and Materials (ASTM). During 1987, Krakatau's general manager and marketing director met twice with representatives of Empire Steel Trading Company, Inc. ("Empire"), a New York corporation with its principal place of business in New York. The meetings took place in San Francisco, California and New York. On November 6, 1987, Krakatau and Empire entered into a contract for the sale of approximately 14,000 metric tons of Krakatau products, f.o.b. Indonesia. Empire accepted delivery of the products in Indonesia, transported the products to the United States and sent approximately 3,000 metric tons of the total shipment of cast wire rods to Forbes Steel in West Memphis, Arkansas.[2] Leamon Gould, a Forbes employee, brought this products liability action against Krakatau for permanent injuries he received while unpacking the wire rods at the Forbes plant in August of 1988. The district court

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[2] Although the total cost of the shipment was disputed, the district court found the cost exceeded $900,000.00.

dismissed the complaint finding that Krakatau had insufficient contacts with the state of Arkansas to support in personam jurisdiction. Gould appeals.

II. DISCUSSION

We review de novo the question of whether the nonmoving party has established a prima facie case of personal jurisdiction. *Dakota Industries v. Dakota Sportswear,* 946 F.2d 1384, 1387 (8th Cir. 1991). The burden of proof is on the party seeking to establish the court's in personam jurisdiction and the burden does not shift to the party challenging jurisdiction. *Newhard, Cook & Co. v Inspired Life Centers, Inc.,* 895 F.2d 1226, 1228, (8th Cir. 1990). Because this is a diversity of citizenship case, we must look to Arkansas law for the basis of in personam jurisdiction over the nonresident defendant, limited by the Due Process Clause of the United States Constitution. *Mountaire Feeds, Inc. v. Agro Impex, S.A.,* 677 F.2d 651, 653 (8th Cir. 1982). Gould argues that under the Arkansas "long-arm" statute, the district court may exercise personal jurisdiction over Krakatau.[3]

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[3] The relevant provision of the Arkansas long-arm statute, Ark. Code. Ann. § 16-4-101C.1(d) (1987) provides in pertinent part:

> A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's . . . causing tortious injury in this State by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course

(Continued on following page)

We must make a two-part inquiry into the existence of in personam jurisdiction under Arkansas' long-arm statute. We must first determine whether the facts of the case satisfy the state long-arm statute, *Wines v. Lake Havasu Boat Mfg., Inc.*, 846 F.2d 40, 42 (8th Cir. 1988); if so, we must then determine whether Arkansas' exercise of jurisdiction over Krakatau is consistent with the Due Process Clause of the Fourteenth Amendment. *Id.* Because Arkansas' long-arm statute extends jurisdiction over nonresidents to the limits permitted by the due process clause of the United States Constitution, *Nix v. Dunavant*, 460 S.W.2d 762, 763 (Ark. 1970), our inquiry is limited to whether the district court's exercise of jurisdiction over Krakatau is consistent with due process. *Soo-Line Railroad v. Hawker Siddely Canada, Inc.*, 950 F.2d 526, 528 (8th Cir. 1991).

Due process permits the exercise of personal jurisdiction over a nonresident defendant only when there are "sufficient 'minimum contacts' between the nonresident defendant and the forum state so that the assertion of personal jurisdiction over the nonresident defendant is consistent with traditional notions of fair play and substantial justice." *Mountaire*, 677 F.2d at 654, (citing *International Shoe v. Washington*, 326 U.S. 310, 316 (1945)). In assessing the sufficiency of contacts, we focus on the relationship "among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

(Continued from previous page)

of conduct in this state or devises substantial revenue from goods consumed or services used in this state.

Because due process focuses on the fundamental fairness of exercising jurisdiction over a nonresident defendant, "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253, (1958). The Due Process Clause requires that nonresident defendants have "fair warning that a particular activity may subject a person to the jurisdiction of a foreign sovereign." *Shaffer*, 433 U.S. at 218 (Stevens, J., concurring). This " 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum . . . and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citations omitted). The contacts with the forum must be more than " 'random,' " " 'fortuitous,' " or " 'attenuated.' " *Id.* at 475 (citations and footnotes omitted).

This court has consistently weighed the following factors in its consideration of the due process standard: the nature and quality of defendant's contacts with the forum state; quantity of contacts; source and connection of the cause of actions with those contacts; and, to a lesser degree, the interest of the forum state in providing a forum for its residents; and the convenience of the parties. *Aaron Ferer & Sons Co. v. Diversified Metals Corp.*, 564 F.2d 1211, 1215 (8th Cir. 1977).

Gould contends Krakatau had significant contact with the state of Arkansas by virtue of its advertising in a British trade journal circulated worldwide, the physical presence of Krakatau officers in the United States to

solicit business, and the continual sales of Krakatau products to the United States. We disagree. In applying the principles set forth above, we conclude the exercise of personal jurisdiction over Krakatau would offend traditional notions of fair play and substantial justice. Although we recognize that Arkansas has an [sic] strong interest in providing a forum for an injured resident to bring a products liability action against a nonresident defendant, we find there are insufficient contacts between Krakatau and Arkansas to satisfy due process.

Krakatau is an Indonesian corporation; it is not licensed to do business in the state of Arkansas, nor does it have any office, agent, property, bank accounts or business operations in the state. Krakatau does not advertise or solicit any business in the state, nor does it specially design or tailor its products for use in Arkansas. We disagree with Gould's contention that Krakatau's advertisement in a British trade publication establishes minimum contacts with the state of Arkansas. Krakatau's advertisement, which states that it complies with international standards for steel products, is an insufficient contact with the forum state to satisfy due process. *See Soo Line*, 950 F.2d at 528 (compliance with international railroad standards deemed insufficient contact with forum state).

Furthermore, Krakatau's placement of the wire rods into the stream of international commerce is not an act "purposefully directed" toward the state of Arkansas. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984). Krakatau's contact with Arkansas consisted only of the "fortuitous" introduction of Krakatau products into Arkansas by Empire. *Huston v. Fehr. Bros., Inc.*, 584 F.2d

833, 837 (8th Cir. 1978), *cert. denied*, 439 U.S. 983 (1978). Gould argues that Krakatau could have foreseen that its products would enter the state of Arkansas by virtue of its sales to Empire. We disagree. Although it is arguable that Krakatau could have foreseen that its products would enter the United States, it is highly unlikely that Krakatau could have reasonably anticipated being haled into an Arkansas court. *Humble v. Toyota Motor Co., Ltd.*, 727 F.2d 709, 710 (8th Cir. 1984). At most, Krakatau conducted a limited amount of business with Empire and it was solely at Empire's direction that the wire coils arrived in Arkansas. Standing alone, the fact that the Krakatau could foresee that its product might find its way to Arkansas is too attenuated to constitute purposeful availment of Arkansas' law and protections. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Soo-Line*, 950 F.2d at 529 (contact with a market does not substitute for contact with a forum state). It would be manifestly unjust to require Krakatau to defend itself in a foreign country based on these contacts between Krakatau and the state of Arkansas.

III. CONCLUSION

We hold the district court properly concluded there are insufficient contacts between the state of Arkansas and Krakatau to support the exercise of personal jurisdiction over Krakatau and, accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 91-2514EAJ

Leamon Thurmon Gould, Appellant,	*	Order Denying Petition for Rehearing and Suggestion for Rehearing En Banc
vs.	*	
P.T. Krakatau Steel, Appellee.	*	

The suggestion for rehearing en banc is denied. The petition for rehearing is also denied.

April 9, 1992

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

Supreme Court, U.S.
FILED
AUG 6 1992
OFFICE OF THE CLERK

(2)

No. 92-27

IN THE

Supreme Court of the United States

October Term, 1991

LEAMON THURMON GOULD,
Petitioner
v.
P. T. KRAKATAU STEEL,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

RESPONDENT'S STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Petitioner Leamon Thurmon Gould's ("Gould") presentation of the questions to be considered in this case does not fairly present the facts put before the district court and made part of the record of this lawsuit.

Specifically, in his first question, Gould asserts that respondent P. T. Krakatau Steel ("Krakatau") derived revenue "from its purposeful establishment of a market . . . in the United States, . . . " However, there is no evidence that Krakatau has created or has attempted to create a market in the United States. At most, there is evidence that representatives of Krakatau made two business-related visits to the United States to states other than Arkansas: one visit to San Francisco and the other to attend a business conference in New York.

In his second question, Gould writes that Krakatau "structured its business to avoid direct contacts with any particular state. . . . " There is nothing in the record to support this assertion.

Krakatau suggests that a fairer wording of the question for review by this Court would be the following:

> If a foreign manufacturer exports a product, aware that there is a possibility it may be used in the United States but not knowing nor having reason to know that it will be used in any particular state, and while being

used in Arkansas, that product causes someone injury, does the due process clause of the United States Constitution prohibit a district court from exercising personal jurisdiction over the foreign manufacturer in a diversity action where that foreign manufacturer has had no contact with that state?

RESPONDENT'S STATEMENT OF THE CASE

Gould originally sued Empire Steel Trading Company, Inc. ("Empire") a New York company, which had purchased wire rods from Krakatau in Indonesia, shipped them to the United States and, in turn, supplied wire rods to Gould's employer, Forbes Steel & Wire Corp. ("Forbes").[1] Gould voluntarily dismissed its complaint against Empire to take an immediate appeal of the dismissal of Krakatau from the case. Gould may refile against Empire.

Krakatau disputes Gould's characterization of the established facts of this case. Specifically, Krakatau disputes that there has been any showing of any concerted effort by Krakatau to establish a United States market. On the contrary, the evidence shows only few, sporadic and tangential contacts with the United States market. Those are the following:

---

[1] Krakatau would also point out that there is no proof in the record that the wire rods purchased from Krakatau were the ones involved in the accident.

> (1) Krakatau representatives made three visits to the United States to states other than Arkansas: in June of 1987, Krakatau's General Manager of Marketing met with one or more representatives of Empire in San Francisco, California. In the following month, Soetoro Mangoensoewargo, Marketing Director of the company, met with Empire people in New York for a social visit. In June 1988, Mr. T. Aribowo, Krakatau's President, attended a general steel conference in New York.
>
> (2) In August 1986, Krakatau placed an advertisement in the *Metal Bulletin*, published in the United Kingdom and distributed worldwide, including in the United States. In that advertisement, Krakatau stated that its products complied with international standards, which included the 'ASTM' [American Society for the Testing of Metals]

In his Statement of the Case, Gould concedes correctly that: "There has been and can be no showing that Krakatau was aware that Arkansas was the state of destination for this shipment [of wire rods]." Moreover, Gould must also concede that there has been no showing that Krakatau affirmatively sought to establish a market for its products in the United States.

ARGUMENT: REASONS FOR DENYING THE WRIT

There Is No Jurisdiction Under Rule 10 for Granting the Writ.

Krakatau, pursuant to Rule 10 of the Supreme Court Rules, respectfully suggests that the Petition for Writ of Certiorari should be denied. The decision of the United States Court of Appeals for the Eighth Circuit is not in conflict with the decision of any other United States court of appeals nor any state court of last resort. Rather, the Eighth Circuit's opinion is completely in line with both this Court's and other circuit courts' decisions. Based on controlling precedent, such as *Asahi Metal Industry Co. v. Superior Court of Calif.*, 480 U.S. 102 (1987); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), there could not have been a clearer case against the imposition of jurisdiction over Krakatau. The Eighth Circuit could only affirm the district court's decision that it lacked personal jurisdiction over Krakatau, since Krakatau, as was conceded by Gould, had had *no* contact with the State of Arkansas.

The cases cited by Gould as being in conflict "in principle" with the Eighth Circuit's ruling are all factually distinguishable in a meaningful way from this case. Thus, there is no conflict. The cases cited by Gould, including *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717 (Minn. 1985), *cert. denied*, 474 U.S. 1006 (1985), involved foreign manu-

facturers with exclusive American distributors which did business or had contacts in the forum state. That is not the case here. The point of sale between Krakatau and Empire was F.O.B. Port Cigading, Indonesia. Krakatau had knowledge gained from shipping documents that the product might end up in the United States. It had neither knowledge nor reason to know that any of its steel coils would end up in Arkansas. As Gould concedes, Krakatau never targeted Arkansas as a market and may be wholly ignorant of the state's existence. At most, Krakatau placed its product into the international marketplace of commerce in Indonesia.

Moreover, the facts do not support Gould's assertion that Krakatau affirmatively and purposefully sought a United States market for its products. In any case, the relevant inquiry under decisions handed down by this Court is Krakatau's relationship (or the lack thereof) with the forum state, not with the United States.

CONCLUSION

Respondent P. T. Krakatau Steel respectfully requests that the petition for writ of certiorari of Leamon Thurmon Gould to the United States Court of Appeals for the Eighth Circuit be denied.

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Supreme Court, U.S.
FILED
AUG 11 1992
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No. 92-27

In The

Supreme Court of the United States

October Term, 1991

LEAMON THURMON GOULD,

Petitioner,

v.

P. T. KRAKATAU STEEL,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of appeals
For The Eighth Circuit

REPLY TO BRIEF IN OPPOSITION

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ARGUMENT

Respondent Krakatau, in concluding its Statement of the Case, first quotes petitioner Gould's admission that: "There has been and can be no showing that Krakatau was aware that Arkansas was the state of destination for this shipment [of wire rods]."

Krakatau then states: "Moreover, Gould must also concede that there has been no showing that Krakatau affirmatively sought to establish a market for its products in the United States."

Gould must not and does not concede this. To the contrary, the record shows that Krakatau not only "affirmatively sought to establish" an American market, but indeed accomplished its purpose. Its president and its marketing director made personal visits to the United States to confer with representatives of Empire Steel Trading Company, an American broker. Krakatau advertised the availability of its products in an international journal, pointing out, in part, that its products complied with requirements of the American Society for Testing and Materials.

As a result of these initial marketing efforts in the United States, Krakatau in late 1987 contracted with Empire for a sale of 14,000 metric tons of its products which Krakatau knew would be delivered by Empire chartered vessels to Houston, Tampa and New Orleans.

In short, Krakatau must concede that it did try to establish an American market and was successful in doing so. It simply did not know the identity of the state

or states in which its products would be used or consumed. Over $900,000.00 worth of these products came to rest in Arkansas where, while in the process of being unpackaged, they caused injury to an American citizen.

Krakatau had no prospective contact with Arkansas. But unquestionably it had a significant contact when viewed from the standpoint of the State of Arkansas, which has defined the contact through its long-arm statute, and from the standpoint of petitioner Gould, who continues to ask only for access to his only forum for relief and due process of law.

CONCLUSION

The petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit should be granted.

Respectfully submitted,

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No. 92-27

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

LEAMON THURMON GOULD ..... *Petitioner*

VS.

P. T. KRAKATAU STEEL ..... *Respondent*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF AMICUS CURIAE STATE OF ARKANSAS

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ARKANSAS LEGISLATIVE DIGEST, INC

No. 92-27

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

LEAMON THURMON GOULD ..... *Petitioner*

vs.

P. T. KRAKATAU STEEL ..... *Respondent*

MOTION FOR LEAVE TO FILE AMICUS BRIEF OUT OF TIME

Pursuant to Rule 30.3 of the Supreme Court Rules, the Amicus, State of Arkansas, moves the Court for an extension of time in which to file an amicus brief on behalf of the State of Arkansas manifesting the state's interest in the referenced appeal. The Arkansas Attorney General, who represents the state, just learned of this case on August 7, 1992. The state wishes to file a brief expressing its interest in the issues raised in this appeal because this case may have a direct impact upon the ability of the citizens of the State of Arkansas to seek redress in the courts of the State of Arkansas for injuries resulting from the actions of foreign entities.

Respectfully submitted,

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No. 92-27

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

LEAMON THURMON GOULD ..... *Petitioner*

VS.

P. T. KRAKATAU STEEL ..... *Respondent*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF AMICUS CURIAE STATE OF ARKANSAS

STATEMENT OF INTEREST OF THE STATE OF ARKANSAS

Ordinarily the State of Arkansas would refrain from taking a position with respect to issues raised in the context of private litigation. However, the instant case presents a question which significantly affects actual and potential rights of Arkansas citizens as users and consumers of foreign made products, thus requiring this statement of position in support of the petition of Leamon T. Gould for writ of certiorari.

Almost thirty years ago, Arkansas determined legislatively that foreign defendants should be required to appear and defend actions brought against them in this state if they caused tortious injury in this state by conduct without the state

if they derived substantial revenues from goods consumed in this state. A.C.A. §16-4-101(c)(1)(2). This long-arm statutory provision was enacted to provide a forum for persons sustaining injury in Arkansas. The forum is available to Arkansas citizens and non-citizens alike, as the state has an interest in encouraging compensation for tortious injuries which almost invariably affect medical, insurance and related costs in the state.

The Arkansas statutory scheme is reflected in the statutes of the other thirty jurisdictions listed by petitioner Gould. None of these statutes requires a showing that a foreign defendant prospectively target the affected state as a market. Rather, the fact of contact with the forum state is established by satisfaction of the statutory requirements — in this case a claim for relief arising from respondent's causing tortious injury in Arkansas by an act or omission outside Arkansas while deriving substantial revenue from consumption of its products in Arkansas.

As international trade barriers diminish and, in some instances, disappear, foreign manufactured goods will proliferate in the various states. Manufacturers who seek and establish United States markets should respond in United States courts to complaints of consumers and users, particularly if, as in the instant case, the manufacturer's ultimate forum market (3,000 metric tons, value exceeding $900,000.00) is more than inconsequential.

The State of Arkansas therefore urges that Leamon Thurmon Gould's petition for writ of certiorari be granted, and adopts the arguments set forth in his brief.

Respectfully submitted,

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